Tribal Wildlife Management

Introduction

Wildlife resources have always been central to the cultures of the treaty Indian tribes in western Washington. Elk, deer, waterfowl and other wildlife have long provided a source of food and clothing for Indian people.

As with salmon and shellfish, the tribes reserved the right to harvest wildlife in treaties with the U.S. government:

"The right of taking fish at all usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting and gathering roots and berries on open an unclaimed lands..."

- Treaty of Point Elliott, 1855

Little has changed over the centuries. The ancient link between the tribes and wildlife remains strong. Wildlife still provides important nutrition to Indian families on reservations where unemployment can run as high as 80 percent. As traditional foods, deer, elk and other wildlife remain important elements of feasts for funerals, naming ceremonies and potlatches. Hides, hooves, antlers, feathers and other wildlife parts are still used for traditional ceremonial items and regalia.

Unfortunately, the quality and quantity of the habitat upon which the wildlife resources in western Washington depend for their survival are declining rapidly. Where virgin forests once stood there is now urban sprawl. Deer and elk herds have been squeezed into smaller and smaller areas of degraded and fragmented habitat.

Concurrently, the ability of tribes to exercise their treaty-reserved right to hunt on open and unclaimed lands has also been dramatically impacted. Tribal members have been forced to hunt farther and farther from home to harvest their treaty-reserved share of wildlife resources.

A Stillaguamish tribal volunteer cradles the hooded head of a cow elk being readied for transplantation from Mt. St. Helens to the Nooksack River basin. *Photo: T. Meyer*

Overlaid on this background has been a series of legal skirmishes as well as state and federal court rulings, most of them favorable to the tribes, addressing the tribal treaty hunting rights.

The treaty Indian tribes in western Washington, as responsible co-managers of the wildlife resource, work cooperatively with the State of Washington, citizen groups and others to manage the wildlife resources. However, the tribes face continual challenges to their treaty hunting rights.

Historically, the tribes have fared well in court cases involving their treaty-reserved rights, beginning in 1974 with U.S. vs. Washington, which re-affirmed the tribes' treaty right to up to half of the harvestable number of salmon returning to Washington waters. A similar ruling was handed down in 1994 regarding tribal treaty shellfish harvest rights. Both rulings have been upheld by the U.S. Supreme Court.

Because tribes do not hunt commercially, conflicts between tribes, the state and non-Indian hunters did not develop as early as with fishing. Further, wildlife populations were larger because more high quality habitat was available. But explosive growth in western Washington over the past several decades has reduced the amount of available habitat for wildlife, and has forced tribal members to hunt farther afield in order to exercise their treaty right.

State and federal courts have consistently upheld the right of treaty tribes to hunt on open and unclaimed land free of state regulation. The courts have generally ruled that lands such as National Forests, which have not been set aside for uses incompatible with hunting, are open and unclaimed. Further, the courts have ruled that in order to apply a state regulation to a tribal member with a treaty hunting right, the state must prove that the regulation is both reasonable and necessary for conservation purposes.

In 1999 the U.S. Supreme Court upheld the tribal treaty right to hunt on state lands free of state regulation in *Minnesota v. Mille Lacs Band of Chippewa Indians*. The ruling stemmed from hunting, fishing and gathering rights reserved by the tribe in an 1837 treaty with the U.S. government.

The Washington State Supreme Court made a similar ruling in 1999 in *State v. Buchanan*. Donald Buchanan, a Nooksack tribal member, was charged in 1995 with harvesting two elk during a closed season at the state-owned Oak Creek Wildlife Area. Two lower courts ruled Buchanan was simply exercising his treaty-reserved right to hunt on open and unclaimed land when he harvested the two elk.

The state Supreme Court ruled that treaty tribes may hunt within original tribal lands and traditional areas and also ruled that the state-owned Oak Creek Wildlife Area was open and unclaimed land within the meaning of the treaties. The court also threw out the state's argument that the treaty hunting right was eliminated when Washington became a state. As in the Mille Lacs case, the court said that only the U.S. government may abrogate a treaty right.

While tribes prefer to cooperate with the State of Washington in the implementation of their treaty hunting rights and responsibilities as co-managers of the wildlife resources, they realize that they may be forced to seek a clarification of their treaty hunting rights through the federal courts.

Tribal Wildlife Management

The treaty Indian tribes in western Washington have a long history of co-managing natural resources with the State of Washington. The tribes and state have had numerous successes in implementing cooperative natural resource management efforts to protect, restore and enhance the productivity of natural resources in Washington.

In a recent policy decision, the Washington Fish and Wildlife Commission recognized that "the preservation of healthy, robust and diverse fish and wildlife populations is largely dependent on the state and tribes working in a cooperative and collaborative manner."

It is important to understand that tribal hunters do not hunt for sport. Hunting is a spiritual and personal undertaking for each hunter. All tribes prohibit hunting for commercial purposes.

Western Washington treaty tribal hunters account for a very small portion of the total combined deer and elk harvest in the state. According to statistics for 2002-2003, tribal members harvested only 531 deer and 254 elk – less than two percent of the total deer and elk take.

Most tribal hunters do not hunt only for themselves. The culture of tribes in western Washington is based on extended family relationships of parents, grandparents, aunts, uncles, cousins and other relatives. A tribal hunter usually shares his game with several families. In some cases, tribes may designate a hunter to harvest one or more animals for elders or families who cannot provide for themselves.

As a sovereign government, each treaty tribe develops its own hunting regulations and ordinances governing tribal members. Each tribe also maintains an enforcement program to ensure compliance with tribal regulations. As responsible managers, tribes know the value of enforcement as a management tool. Tribes have limited hunting opportunity for tribal members when, because of budgetary constraints, they have lacked resources to adequately enforce their regulations. The ratio of tribal enforcement officers to treaty hunters is higher than the ratio of state enforcement officers to non-Indian hunters.

Like the State of Washington, tribes set seasons based on sound biological information about the ability of the resource to support harvest. In the northern Puget Sound region, for example, tribes have for the past six years prohibited hunting on the Nooksack elk herd because the

herd's population is too low. Loss and degradation of habitat are the primary causes of the herd's decline. Before opening any area to hunting, many tribes forward their regulations to WDFW for review and comment. Tribes also share their harvest data with the department. Tribal hunters are licensed by their tribes and must obtain tags for each big game animal they wish to hunt. If a hunter is successful, he must tag the animal and submit a harvest report to the tribe. Unlike the state system of voluntary reporting, tribal members are required to report all harvest. All tribal hunters carry photo identification cards with their name, date of birth, tribal affiliation and other information.

If a tribal member is found in violation of tribal regulations, he is cited into tribal court. Penalties can include fines and loss of hunting privileges. In most cases, tribal hunting regulations address the same harvest and safety concerns as state rules, such as prohibiting the carrying of loaded firearms in vehicles.

A number of tribes conduct hunter education courses, aimed especially at young tribal members, to ensure their hunters are safe when exercising their treaty right. Students are taught how to handle firearms, ethical considerations and the reasons behind tribal hunting regulations. Cultural aspects of hunting, as well as treaty hunting rights, also are covered in the classes.

Collectively, the tribes have created the Inter-tribal Wildlife Committee of the Northwest Indian Fisheries Commission (NWIFC) to provide a forum for addressing inter-tribal issues. The committee also provides a unified voice in discussions with state and federal wildlife managers.

Tribes conduct comprehensive management programs to preserve, protect and restore the wildlife resources in western Washington. While treaty hunting rights are crucial to the tribes, tribal wildlife management projects take a broader perspective – focusing on an ecosystem-based approach to protecting wildlife.

FY 03 Tribal Wildlife Management Activities

Following are examples of the types of management projects conducted by tribes during FY 03:

- A cooperative effort between the Point Elliott Treaty tribes and the Washington Department of Fish and Wildlife to bolster a weak population of elk in the North Cascades resulted in the successful transfer of 41 animals from the Mount St. Helens area Oct. 4-5. The elk were moved to help augment the flagging Nooksack elk herd, also known as the North Cascades elk herd.

The elk relocation project, involving staff from the tribes, WDFW, and volunteers, took place in St. Helens Wildlife Area east of Castle Rock. Two chartered helicopters herded elk from the Toutle River valley floor and slowly moved the animals toward a capture structure that had been built specifically for the relocation effort.

Once captured, elk were moved individually through a livestock chute where veterinarians checked the health of each animal and injected the elk with vitamins and antibiotics.

Adult cow elk were also fitted with radio-transmitting collars, which will allow biologists to track their movements and habitat uses. The Point Elliott treaty tribes, working in cooperation with the state co-managers and Rocky Mountain Elk Foundation volunteers, will use the collars to electronically monitor the movements of the transplanted elk for the next two years. The Point Elliott tribes include Lummi, Muckleshoot, Nooksack, Sauk-Suiattle, Stillaguamish, Suquamish, Swinomish, Tulalip and Upper Skagit.

Animals were moved directly into livestock trailers that had been modified for the transfer. The female elk and their juvenile offspring were released near the south fork of the Nooksack River.

Biologists believe a number of factors contributed to the decline in the North Cascades elk herd's population, including habitat changes and over-hunting. WDFW and the tribes have forbidden hunting in the herd's core area since 1993, and hunting seasons for the area will not be established until elk populations have reached a recovery goal.

"We are pleased with the initial results of this joint two-year effort," said Todd Wilbur, Swinomish Tribe, who chairs the Inter-tribal Wildlife Committee of the Northwest Indian Fisheries Commission. "The tribes are committed to enhancing and protecting elk populations throughout western Washington. This project will dramatically improve the health of the North Cascades elk herd."

- In anticipation of the transfer, tribes stepped up habitat improvement efforts in the Nooksack basin. Tribal leaders and volunteers painstakingly removed out noxious weeds and provided nutritional salt blocks for elk around Baker Lake, the south fork of the Nooksack River, and surrounding areas.

"This place is loaded with tracks, so we know it supports elk," said Todd Wilbur, chairman of the Northwest Indian Fisheries Commission's Inter-Tribal Wildlife Committee, after removing a burgeoning stand of scotch broom. "We're trying to make these sites as elk-friendly as possible."

At two sites, one along Bear Creek and another along the Nooksack River, tribal and non-tribal crews spent months removing undesirable plants like foxglove and cultivating a variety of staple foods for hungry elk. Removing certain dangerous non-native species and replacing them with a mix of healthy native plants will assist animals that have been living in the vicinity for years as well as the newly transferred arrivals.

The goals here are simple: make sure elk that roam these fields, meadows and tree stands are well-fed and healthy. In turn, that improves safety for the herd in other ways.

"Having food available here in the meadows prevents elk from wandering toward the highway," said Shawn Yanity, vice chairman of the Stillaguamish Tribe. "By ripping up invasive plants and replacing them with nutritional grasses that elk love, we hope to improve their chances of survival."

The Nooksack elk herd, which was traditionally hunted by the region's tribes, needs all the help it can get. Two decades ago, nearly 2,000 animals roamed these tracts of land as part of the herd. Due to a variety of factors – habitat destruction included – the population has dwindled below 400 elk. The few surviving animals wander their historic home in scattered bands. Both tribal and non-tribal hunting has been closed for over five years to prevent the herd from dipping further toward extinction.

"The tribes have proven we're willing to make great sacrifices for the future of the resource," said Wilbur. "Giving up hunting is a huge blow to us, but we've been willing to make that sacrifice – and also commit millions of dollars and thousands of hours toward restoration work. In the long term, it's unacceptable to us to let these animals die off. We'll work as hard as we have to in order to save them."

Tribes have created a technical working group through the NWIFC to share findings from research projects and address wildlife management issues common to all of the tribes.

An NWIFC wildlife biologist assists tribes in many aspects of natural resource management. One of the wildlife biologists's primary roles is maintaining and coordinating the statewide inter-tribal wildlife harvest database. Now in its fifth season, the database has become an important tool in tribal wildlife management, and is also shared with state and federal agencies. Species, sex, location of harvest and other information is entered into the database to aid tribes in meeting their management goals. The wildlife biologist coordinates collection of all tribal game harvest data, consults with individual tribes on their data collection systems, and provides technical analysis of statistics contained in the harvest database.

Tribal harvest regulations are collected annually by the wildlife biologist and cataloged before being distributed to tribes, as well as state and federal agencies. The biologist also coordinates meetings of Inter-tribal Wildlife Committee, as well as joint meetings with the State of Washington, federal agencies, local governments, legislative organizations and community groups.

The NWIFC biologist plays a key role to those tribes who currently do not have a wildlife biologist on staff, providing technical assistance regarding management decisions, development of wildlife management plans, and proposed legislation that may impact tribal programs. For tribes with wildlife biologists on staff, the NWIFC provides assistance with field work, design and implementation of research projects, and other services.

The treaty Indian tribes in western Washington possess an unbreakable cultural and spiritual bond with the wildlife resources of the region. That bond is bolstered by an indisputable treaty-reserved right to harvest these resources for their needs. As responsible co-managers of those resources, with the State of Washington, the tribes' primary goal is to ensure the health of these resources for future generations.

For More Information

For more information about the natural resource management activities of the treaty Indian tribes in western Washington, contact the Northwest Indian Fisheries Commission, 6730 Martin Way E., Olympia, WA 98516; or call (360) 438-1180. Visit the NWIFC home page at www.nwifc.org.